

104TH CONGRESS
1ST SESSION

H. R. 1313

To establish community support requirements for mortgage banks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1995

Ms. WATERS introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To establish community support requirements for mortgage banks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mortgage Fairness
5 Act”.

6 **SEC. 2. COMMUNITY SUPPORT OBLIGATIONS OF MORT-**
7 **GAGE BANKS.**

8 (a) IN GENERAL.—Each mortgage bank shall have
9 an ongoing responsibility to meet the credit needs of all
10 the communities in which such bank makes a significant

1 number of extensions of credit or extends a significant
2 amount of credit, including extensions of credit in low- and
3 moderate-income neighborhoods of such communities.

4 (b) DEFINITIONS.—For purposes of this Act, the fol-
5 lowing definitions shall apply:

6 (1) MORTGAGE BANK.—The term “mortgage
7 bank” means any lender who does not accept depos-
8 its and originates housing related loans.

9 (2) OFFICE.—The term “Office” means the Of-
10 fice of Mortgage Bank and Insurance Supervision
11 established by the Secretary of Housing and Urban
12 Development pursuant to section 3.

13 (3) SECRETARY.—The term “Secretary” means
14 the Secretary of Housing and Urban Development.

15 **SEC. 3. ESTABLISHMENT OF OFFICE OF MORTGAGE BANK**
16 **AND INSURANCE SUPERVISION.**

17 The Secretary of Housing and Urban Development
18 shall establish within the Department of Housing and
19 Urban Development an office to be known as the Office
20 of Mortgage Bank and Insurance Supervision to evaluate
21 the community support performance of mortgage banks
22 and mortgage insurance companies.

1 **SEC. 4. MORTGAGE BANK COMMUNITY SUPPORT STATE-**
2 **MENTS.**

3 (a) IN GENERAL.—The Office shall, on a biennial
4 basis, require each mortgage bank to submit to the Office
5 a community support statement, detailing the efforts of
6 such bank at meeting the housing credit needs of each
7 community in which the bank makes a significant number
8 of extensions of credit or extends a significant amount of
9 credit, including extensions of credit in low- and moderate-
10 income neighborhoods of such communities.

11 (b) CONTENTS.—The statement submitted by each
12 mortgage bank under subsection (a) shall include—

13 (1) the data required to be maintained and dis-
14 closed by the lender under the Home Mortgage Dis-
15 closure Act of 1975 for the previous 2 years, in a
16 format which the Office shall establish;

17 (2) underwriting criteria employed by the bank
18 for all of the bank's housing loan products;

19 (3) descriptions of any activity the bank has
20 undertaken over the period under review to ascertain
21 and meet identified credit needs in low- and mod-
22 erate-income neighborhoods within communities in
23 which the bank makes a significant number of exten-
24 sions of credit or extends a significant amount of
25 credit, including any partnerships formed with com-
26 munity-based organizations, nonprofit developers of

1 affordable housing, or agencies of State or local
2 government;

3 (4) details of any findings of technical or sub-
4 stantive violations of the Equal Credit Opportunity
5 Act or the Fair Housing Act, and any settlements
6 or judgments arising from any such findings; and

7 (5) any other information the Office may
8 require.

9 **SEC. 5. MORTGAGE BANK COMMUNITY SUPPORT EVALUA-**
10 **TION.**

11 The Office shall determine whether a mortgage bank
12 is maintaining an adequate community support perform-
13 ance, based on—

14 (1) community support performance statements
15 received from mortgage banks;

16 (2) an analysis of the data required to be main-
17 tained and disclosed by the lender under the Home
18 Mortgage Disclosure Act of 1975 for the previous 2
19 years with respect to metropolitan statistical areas
20 in which the bank originates a significant number of
21 home loans, which shall emphasize—

22 (A) the institution's market share in neigh-
23 borhoods of different racial and income charac-
24 teristics;

1 (B) the number of applications received
2 from minorities and low- and moderate-income
3 persons; and

4 (C) the rate at which the institutions re-
5 jects applications from minority and white ap-
6 plicants;

7 (3) any evidence of illegal discriminatory credit
8 practices, including prescreening, or offering less fa-
9 vorable loan products to applicants of different ra-
10 cial backgrounds; and

11 (4) public comment, which shall be received by
12 the agency for not less than 90 days after the Office
13 actively solicits comment solicitations of comment
14 through notice in the Federal Register and regular
15 communications with community based organiza-
16 tions.

17 **SEC. 6. PENALTIES FOR FINDING OF INADEQUATE COMMU-**
18 **NITY SUPPORT PERFORMANCE BY MORT-**
19 **GAGE BANKS.**

20 (a) REMEDIAL ACTION.—If the Secretary finds that
21 a mortgage bank is maintaining an inadequate level of
22 community support, the Secretary may issue an order—

23 (1) requiring the bank to file a community sup-
24 port action plan with the Office not more than 90
25 days after the finding, which shall include concrete

1 goals and timetables for correcting identified defi-
2 ciencies; and

3 (2) prohibiting the bank from using any pro-
4 gram or product administered by the Secretary until
5 all identified deficiencies are met.

6 (b) CEASE AND DESIST ORDERS.—

7 (1) ISSUANCE OF ORDER.—

8 (A) IN GENERAL.—If the Secretary deter-
9 mines that there is reasonable cause to believe
10 that a mortgage bank is violating, has violated,
11 or is about to violate an order under subsection
12 (a) or a community support action plan filed
13 pursuant to such an order, the Secretary may
14 issue an order requiring the mortgage bank
15 to—

16 (i) cease and desist from any such vio-
17 lation; and

18 (ii) take such affirmative action to
19 prevent the occurrence or the continuance
20 of such violation as the Secretary deter-
21 mines to be appropriate.

22 (B) NOTICE OF CHARGES.—An order is-
23 sued under this paragraph shall include a notice
24 of the charges on which the order is based and

1 a statement of the facts constituting the alleged
2 violation.

3 (C) EFFECTIVE PERIOD.—An order issued
4 under this paragraph shall—

5 (i) become effective upon service to
6 the mortgagee; and

7 (ii) remain effective and enforceable
8 pursuant to the terms of the order unless
9 modified or rescinded by the Secretary or
10 pursuant to an order of a court under
11 paragraph (3) or in connection with the
12 court's review of any administrative pro-
13 ceedings with respect to the order issued
14 under this subsection.

15 (2) HEARING.—Any mortgage bank which re-
16 ceives an order under paragraph (1) shall be af-
17 forded an opportunity for a hearing on the record by
18 the Secretary as soon as practicable but not later
19 than 20 days after the order has been served.

20 (3) JUDICIAL HEARING.—Within 10 days after
21 a mortgage bank has been served with a cease-and-
22 desist order under this subsection, the bank may
23 apply to the United States district court for the ju-
24 dicial district in which the home office of the bank
25 is located, or the United States District Court for

1 the District of Columbia, for an injunction setting
2 aside, limiting, or suspending the enforcement, oper-
3 ation, or effectiveness of such order pending the
4 completion of the administrative proceedings pursu-
5 ant to the notice of charges served upon the bank,
6 and such court shall have jurisdiction to issue such
7 injunction.

8 (4) JUDICIAL ENFORCEMENT.—The Secretary
9 may apply to the United States district court, or the
10 United States court of any territory, within the ju-
11 risdiction of which the home office of the mortgagee
12 is located, for an injunction to enforce any effective
13 and outstanding order issued under this subsection
14 and, if the court determines that there has been a
15 violation or threatened violation of such order, the
16 court shall issue such injunction.

17 (c) CIVIL MONEY PENALTY.—

18 (1) IMPOSITION OF PENALTY.—

19 (A) IN GENERAL.—The Secretary may im-
20 pose a civil money penalty on any mortgage
21 bank, and any director, officer or employee of
22 a mortgage bank, who violates any order issued
23 under subsection (a) or (b).

1 (B) AMOUNT OF PENALTY.—The amount
2 of the penalty, as determined by the Secretary,
3 may not exceed—

4 (i) in the case of a violation of an
5 order issued under subsection (a), \$10,000
6 for each month during which such violation
7 occurs; and

8 (ii) in the case of a violation of an
9 order issued under subsection (b), \$10,000
10 for each day during which such violation
11 continues.

12 (C) NOTIFICATION TO ATTORNEY GEN-
13 ERAL.—Before taking action to impose a civil
14 money penalty for a violation under subpara-
15 graph (A), the Secretary shall inform the Attor-
16 ney General of the United States.

17 (2) ASSESSMENT.—

18 (A) WRITTEN NOTICE.—Any penalty im-
19 posed under paragraph (1) may be assessed and
20 collected by the Secretary by written notice.

21 (B) FINALITY OF ASSESSMENT.—If, with
22 respect to any assessment under subparagraph
23 (A), a hearing is not requested pursuant to
24 paragraph (5) within the period of time allowed

1 under such paragraph, the assessment shall
2 constitute a final and unappealable order.

3 (3) AUTHORITY TO MODIFY OR REMIT PEN-
4 ALTY.—The Secretary may compromise, modify, or
5 remit any penalty which the Secretary may assess or
6 already has assessed under paragraph (1).

7 (4) MITIGATING FACTORS.—In determining the
8 amount of a penalty under paragraph (1) with re-
9 spect to any person, the Secretary shall take into ac-
10 count the appropriateness of the penalty with re-
11 spect to—

12 (A) the gravity of the offense;

13 (B) any history of previous violations by
14 the person;

15 (C) the ability of the person to pay the
16 penalty;

17 (D) injury to the public;

18 (E) benefits received by the person as a re-
19 sult of the violation;

20 (F) the deterrent effect of the penalty on
21 future violations by such person and other per-
22 sons; and

23 (G) such other factors as the Secretary
24 may determine in regulations to be appropriate.

1 (5) HEARING.—The person against whom a
2 civil money penalty is assessed under paragraph (1)
3 shall be afforded an opportunity for a hearing on the
4 record, if such person submits a request for such
5 hearing within 20 days after the issuance of the no-
6 tice of the assessment.

7 (6) COLLECTION.—

8 (A) REFERRAL.—If any person fails to pay
9 an assessment after any penalty assessed under
10 this subsection has become final, the Secretary
11 shall notify the Attorney General who shall re-
12 cover the amount assessed in the appropriate
13 United States district court.

14 (B) APPROPRIATENESS OF PENALTY NOT
15 REVIEWABLE.—In any civil action under sub-
16 paragraph (A), the validity and appropriateness
17 of the penalty shall not be subject to review.

18 (7) DISBURSEMENT.—All penalties collected
19 pursuant to this subsection shall be deposited into
20 the Treasury of the United States.

21 (8) AGENCY PROCEDURES.—The Secretary
22 shall, by regulation, establish standards and proce-
23 dures for carrying out this subsection.

1 **SEC. 7. COMMUNITY SUPPORT REQUIREMENTS FOR MORT-**
2 **GAGE INSURANCE COMPANIES.**

3 (a) IN GENERAL.—Each mortgage insurance com-
4 pany shall—

5 (1) report to the Office the number and total
6 dollar amount of each mortgage insurance policy
7 written by the company, by census tract, the race,
8 gender, and income of applicants for mortgage in-
9 surance, and the disposition of each application for
10 mortgage insurance;

11 (2) demonstrate to the Secretary adequate sup-
12 port for community credit needs; and

13 (3) make public to any person the underwriting
14 criteria for any mortgage insurance the company
15 offers.

16 (b) 2-YEAR REPORTING REQUIREMENT.—At least
17 once during each 2-year period beginning after the date
18 of enactment of this Act, each mortgage insurance com-
19 pany shall submit a report to the Office containing the
20 following information:

21 (1) ADEQUACY OF AVAILABILITY OF MORTGAGE
22 INSURANCE.—The extent to which adequate mort-
23 gage insurance is available in low- and moderate-in-
24 come and minority neighborhoods within areas in
25 which the company writes a significant number of
26 mortgage insurance policies.

1 (2) UNDERWRITING GUIDELINES.—The extent
2 to which underwriting guidelines used by the com-
3 pany do not unreasonably restrict access to low- and
4 moderate-income families within areas in which the
5 company writes a significant number of mortgage in-
6 surance policies.

7 (c) DUTIES OF THE OFFICE.—The Office shall con-
8 duct biennial community support reviews of mortgage in-
9 surance companies including analysis of the following:

10 (1) The data collected by the Agency on the
11 distribution of the mortgage insurance company's
12 policies by census tract and data on the disparate
13 treatment of applicants for mortgage insurance
14 based on the applicants' race, gender, and income.

15 (2) The underwriting criteria employed by the
16 company and the extent to which such criteria do
17 not unreasonably restrict access to credit for low-
18 and moderate-income and minority persons or neigh-
19 borhoods.

20 (3) Community support statements received
21 from the mortgage insurance company.

22 (4) Any other information the Secretary may
23 require mortgage insurance companies to submit.

24 (5) Any comments received from the public on
25 the community support performance of the mortgage

1 insurance company during the period covered by the
2 review under this paragraph.

3 (d) DUTIES OF THE SECRETARY.—The Secretary
4 shall—

5 (1) solicit and accept public comment for no
6 fewer than 90 days before issuing a finding in con-
7 nection with the review of a mortgage insurance
8 company under subsection (c)(2); and

9 (2) review the community support performance
10 of each mortgage insurance company and determine
11 whether the company is providing an adequate level
12 of community support in the areas in which such
13 company writes a significant number of mortgage in-
14 surance policies.

15 (e) PERFORMANCE STATEMENT.—If, after reviewing
16 any evidence, the Secretary concludes that a mortgage in-
17 surance company is not meeting the requirements of this
18 section, the Secretary may require such company to sub-
19 mit a statement indicating how the company expects to
20 improve its record of providing community support.

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